

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROBERT HOLMES III,

Petitioner,

vs.

BRIAN WILLIAMS, et al.,

Respondents.

Case No. 2:12-cv-00013-JCM-GWF

ORDER

The court directed petitioner to show cause why the court should not dismiss this action as untimely. Order (#3). Petitioner has submitted a response (#7), in which he makes two arguments why the court should not dismiss the action. The court rejects both arguments and dismisses the action.

First, petitioner argues that the Nevada Supreme Court erred in determining that his state habeas corpus petition is untimely, which, in turn, would make those proceedings eligible for tolling pursuant to § 2244(d)(2). The Nevada Supreme Court's decision is not subject to review by this court. "When a postconviction petition is untimely under state law, 'that [is] the end of the matter' for purposes of § 2244(d)(2)." Pace v. DiGuglielmo, 544 U.S. 408, 414 (2005) (quoting Carey v. Saffold, 536 U.S. 214, 226 (2002)). The untimely state habeas corpus petition does not toll the period of limitation.

Second, petitioner argues that grounds 1 and 2 of the petition are challenges to the subject matter jurisdiction of the state court to accept his guilty plea, and that he can raise a jurisdictional challenge at any time. The language of the statute of limitation contains no such exceptions, and no


1 court has determined that such exceptions exist. Cf. Barreto-Barreto v. United States, 551 F.3d 95,
2 100 (1st Cir. 2008) (holding that no exception for jurisdictional challenges exists for equivalent
3 period of limitations of motion attacking a federal sentence pursuant to 28 U.S.C. § 2255).

4 Reasonable jurists would not find the court's conclusion to be debatable or wrong, and the
5 court will not issue a certificate of appealability.

6 IT IS THEREFORE ORDERED that this action is **DISMISSED** with prejudice because it is
7 untimely. The clerk of the court shall enter judgment accordingly.

8 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

9 DATED: July 5, 2013.

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12 JAMES C. MAHAN
13 United States District Judge
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